

Minnesota Board of Cosmetologist Examiners

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; OAH Docket No. 60-9013-31884; Revisor R-4258

Proposed Amendments to Rules Governing the Licensure and Practice of Cosmetologists, Estheticians, Nail Technicians, Instructors and School Managers, and the Licensure and Operation of Salons and Schools, *Minnesota Rules*, chapters 2105 and 2110; including the proposed repeal of parts 2105.0010, subparts 5, 8, 9, and 12; 2105.0100; 2105.0120; 2105.0130; 2105.0140; 2105.0150; 2105.0160; 2105.0180; 2105.0185; 2105.0190, subpart 5; 2105.0200, subpart 4; 2105.0210; 2105.0300; 2105.0320; 2105.0340; 2105.0350; 2105.0360, subpart 2; 2105.0380; 2105.0400; 2105.0450; 2105.0600; 2105.0610; 2110.0010, subparts 3, 5, 6, 10, 11, 13, and 19; 2110.0120; 2110.0130; 2110.0140; 2110.0150; 2110.0300; 2110.0340; 2110.0370; 2105.0410, subpart 4; 2110.0420; 2110.0540; 2110.0560; 2110.0570; 2110.0620; and 2110.0700.

Introduction. The Board of Cosmetologist Examiners intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on April 27, 2016, the Board will hold a public hearing in Room 200, State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd, St. Paul, Minnesota 55155 starting at 9 a.m. on Monday, June 6, 2016 and if necessary, continuing at 9 a.m. on Tuesday, June 7, 2016. To find out whether the Board will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after April 27, 2016 and before June 6, 2016.

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to Rebecca Gaspard at rebecca.gaspard@state.mn.us, phone 651-201-2751, or BCE, 2829 University Avenue Southeast, Suite 710, Minneapolis, Minnesota, 55414, or faxed to 612-617-2601. TTY users may call 1-800-627-3529.

Subject of Rules. The proposed new rules, rules amendments, and repeals of rules are about the licensure and practice of cosmetologists, estheticians, nail technicians, instructors, and school managers; and the licensure and operation of salons and schools. The proposed changes will affect all cosmetologists, estheticians, nail technicians, salon managers, school managers, instructors, salons and schools, and all applicants for licensure, because the topics of proposed rule changes include definitions; applying for licensure, maintaining a license, applying to renew a license, and applying to renew an expired license; expiration dates of testing results; changing terminology and reactivation of retired licenses; becoming re-licensed after license revocation; advertising by individuals, salons and schools; unregulated services; license cycles; scope of practice for cosmetologists, estheticians, and nail technicians; licensees who lease space in a salon and salons that lease space to licensees; inspections of salons, permit holders, and

schools; inspection requirements, results and penalties; license posting requirements; salon prohibitions; military temporary licenses; continuing education requirements and continuing education providers; designated licensed salon managers and designated licensed school managers; physical and operational requirements for salons and schools, supervision requirements for salons and schools; infection control and safety: salons in suite-style salon facilities; salons in home residences; salons in nursing homes; special event permits and homebound service permits; salon and practice prohibitions; school curriculum, field trips, refund policies, furniture, fixtures, supplies, guest presenters, transfer students, school reporting requirements, substitute instructors and other school related rules; refresher courses and skills courses; housekeeping changes; other changes to update the rules; changes to make the rules easier to understand and administer; and other topics related to the practice of cosmetology, esthetics, nail technology, and salons and schools.

Statutory Authority. The Board's statutory authority to adopt rules is stated in Minnesota Statutes, section 155A as follows:

§155A.23 Subd. 9, which states: "Salon" does not include the home of a customer but the board may adopt health and sanitation rules governing practice in the homes of customers.

§155A.26, which states: The Board may develop and adopt rules according to chapter 14 that the board considers necessary to carry out sections 155A.21 to 155A.36.

§155A.27 Subd. 2., which states: Qualifications for licensing in each classification shall be determined by the board and established by rule, and shall include educational and experiential prerequisites. The rules shall require a demonstrated knowledge of procedures necessary to protect the health of the practitioner and the consumer of cosmetology services, including but not limited to chemical applications

§155A.27 Subd. 7., which states: Renewal of license shall be for a period of three years under conditions and process established by rule.

§155A.29 Subd. 2., which states: The conditions and process by which a salon is licensed shall be established by the board by rule.

§155A.29 Subd. 3., which states: Minimum infection control standards for the operation of a salon shall be established by rule.

§155A.29 Subd. 4., which states: Licenses shall be renewed every three years by a process established by rule.

§155A.30 Subd. 2., which states: The board shall by rule establish minimum standards of course content and length specific to the educational preparation prerequisite to testing and licensing as cosmetologist, esthetician, and manicurist.

§155A.30 Subd. 8., which states: Other financial guarantees which would assure protection of the public as determined by rule;

§155A.30 Subd. 6(c), which states: Application for renewal of license shall be made as provided in rules adopted by the board and on forms supplied by the board.

Copies of rule drafts. The rules drafts are available on the board's website at www.bceboard.state.us.mn and at the Board's offices. Links to the rules drafts are included in the email notification of licensees and parties on the Board's rulemaking email list. A free copy may be requested by emailing bce.board@state.mn.us; or by calling the agency contact person listed above. A copy of the proposed rules is published in the *State Register* on March 28, 2016.

Comments. You have until 4:30 p.m. on Wednesday, April 27, 2016 to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules.

Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Board hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on Wednesday, April 27, 2016. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Board will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The Board might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Board follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Board encourages you to participate in the rulemaking process.

Cancellation of Hearing. The Board will cancel the hearing scheduled for 9 am on Monday, June 6, 2016 and if necessary, continued at 9 am on Tuesday, June 7, 2016, if the agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also check the Board's website at www.bceboard@state.mn.us or call the agency contact person at 651-201-2751 after Wednesday, April 27, 2016 to find out whether the hearing will be held. On the scheduled day, you may check for whether the hearing will be held by going on-line at www.bceboard@state.mn.us

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Board will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Board will hold the hearing on the dates and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge James E. LaFave is assigned to conduct the hearing. Judge LaFave's Legal Assistant Denise Collins can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7900, and fax (651) 539-0310 or denise.collins@state.mn.us.

Hearing Procedure. If the Board holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

The agency requests that any person submitting written views or data to the Administrative Law Judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

Statement of Need and Reasonableness. The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It explains the Board's reasoning behind each of the proposed changes. It is now available on the Board's website at www.bceboard@state.mn.us, at the Board's offices, and can be requested by emailing bce.board@state.mn.us or from the agency contact person. You may review or obtain copies for the cost of reproduction by contacting the agency contact person.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The Board will submit the rules and supporting

documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Signed by Executive Director, Gina Stauss, on March 1, 2016